



**SUPREME COURT OF CALIFORNIA
ORAL ARGUMENT CALENDAR
SAN FRANCISCO SESSION
MARCH 3, 4, and 5, 2009**

The following cases are placed upon the calendar of the Supreme Court for hearing at its courtroom in the Earl Warren Building, 350 McAllister Street, Fourth Floor, San Francisco, California, on March 3, 4, and 5, 2009.

TUESDAY, MARCH 3, 2009—9:00 A.M.

- (1) S149499 Hernandez v. City of Pomona
- (2) S163430 Keener et al. v. Jeld-Wen, Inc., et al.
- (3) S147345 In re Tobacco II Cases (*George, C.J., not participating; Moore, J., assigned justice pro tempore*)

1:30 P.M.

- (4) S159489 Murphy v. Burch et al.
- (5) S161044 People v. Story (Gary Dean)
- (6) S056425 People v. Davis (Richard Allen) [Automatic Appeal]

WEDNESDAY, MARCH 4, 2009—9:00 A.M.

- (7) S153002 Conroy v. Regents of the University of California
- (8) S157001 Fairbanks v. Los Angeles County Superior Court (Farmers New World Life Insurance et al., Real Parties in Interest)
- (9) S162675 People v. Stone (Nicholas Scott)

1:30 P.M.

- (10) S159319 Ste. Marie v. Riverside County Regional Park & Open Space Dist. (Mt. San Jacinto Community College Dist., Real Party in Interest)
- (11) S157008 People v. Gaines (Rodney Louis)
- (12) S034072 People v. Curl (Robert Zane) [Automatic Appeal] (*Baxter, J., not participating; Needham, J., assigned justice pro tempore*)

THURSDAY, MARCH 5, 2009—9:00 A.M.

- (13) S168047 Strauss et al. v. Horton (Hollingsworth et al., Interveners)
(and two other cases, S168066 Tyler et al. v. State of California et al.
(Hollingsworth et al., Interveners) and S168078 City and County of
San Francisco et al. v. Horton (Hollingsworth et al., Interveners))

GEORGE

Chief Justice

If exhibits are to be transmitted to this court, counsel must apply to the court for permission. (See Cal. Rules of Court, rule 8.224(c).)

**SUPREME COURT OF CALIFORNIA
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The following case summaries are issued to inform the public and the press of cases that the Supreme Court has scheduled for oral argument and of their general subject matter. Generally, the descriptions set out below are reproduced from the original news release issued when review in each of these matters was granted and are provided for the convenience of the public and the press. The descriptions do not necessarily reflect the view of the court or define the specific issues that will be addressed by the court.

TUESDAY, MARCH 3, 2009—9:00 A.M.

(1) *Hernandez v. City of Pomona, S149499*

#07-71 Hernandez v. City of Pomona, S149499. (B182437; 145 Cal.App.4th 701; Superior Court of Los Angeles County; BC228397.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case includes the following issues: (1) Does an action against a police officer for injury resulting from the use of deadly force implicate a single primary right, such that a final judgment in favor of the police officer on a civil rights claim in federal court is res judicata in a subsequent negligence action in state court based on the same circumstances and injury? (2) Where a federal court renders a final judgment that a police officer's use of deadly force was objectively reasonable under the Fourth Amendment and the court subsequently declines to exercise pendent jurisdiction over a state law negligence claim, does the rule against splitting a cause of action bar a subsequent state court action on the negligence claim? (3) Does collateral estoppel bar a subsequent negligence claim based on "pre-seizure" conduct by the police officer that gave rise to the circumstances in which the officer was required to use deadly force?

(2) *Keener et al. v. Jeld-Wen, Inc., et al., S163430*

#08-98 Keener et al. v. Jeld-Wen, Inc., et al., S163430. (D049471; 161 Cal.App.4th 848; Superior Court of San Diego County; GIN031341.) Petition for review after the

Court of Appeal affirmed in part and reversed in part the judgment in a civil action. This case presents the following issues: (1) Does failure to object to incomplete polling before the jury is discharged waive the argument that the polling was incomplete and the verdict invalid? (2) For purposes of Code of Civil Procedure section 618, which provides that a jury verdict “is complete and the jury discharged from the case” if “no disagreement is expressed” upon polling the jurors, is a juror’s silence during polling, if the court failed to poll the juror, an “expressed” disagreement with the verdict?

(3) *In re Tobacco II Cases, S147345 (George, C.J., not participating; Moore, J., assigned justice pro tempore)*

#06-120 *In re Tobacco II Cases, S147345.* (D046435; 142 Cal.App.4th 891; Superior Court of San Diego County; JCCP 4042.) Petition for review after the Court of Appeal affirmed orders decertifying a class in a civil action. This case includes the following issues: (1) In order to bring a class action under Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.), as amended by Proposition 64 (Gen. Elec. (Nov. 2, 2004)), must every member of the proposed class have suffered “injury in fact,” or is it sufficient that the class representative comply with that requirement? (2) In a class action based on a manufacturer’s alleged misrepresentation of a product, must every member of the class have actually relied on the manufacturer’s representations?

1:30 P.M.

(4) *Murphy v. Burch et al., S159489*

#08-45 *Murphy v. Burch et al., S159489.* (A117051; 156 Cal.App.4th 1434; Superior Court of Mendocino County; SCUK-CVG-0493420.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents issues concerning the application of the common law doctrine of easement by necessity, including the question whether, in view of the federal government’s power of eminent domain, the common law doctrine of easement by necessity applies to land originally owned by and subsequently conveyed by the federal government.

(5) *People v. Story (Gary Dean), S161044*

#08-74 *People v. Story (Gary Dean), S161044*. (H030020; nonpublished opinion; Superior Court of Santa Clara County; 210711.) Petition for review after the Court of Appeal reversed a judgment of conviction of a criminal offense. This case presents the following issue: Was evidence of defendant's other sexual offenses admissible under Evidence Code section 1108, even though the charged crime of murder is not among the specific sex offenses listed in section 1108, because the target offense of rape for the prosecution's theory of felony murder *is* a listed offense?

(6) *People v. Davis (Richard Allen), S056425 [Automatic Appeal]*

This matter is an automatic appeal from a judgment of death.

WEDNESDAY, MARCH 4, 2009—9:00 A.M.

(7) *Conroy v. Regents of the University of California, S153002*

#07-391 *Conroy v. Regents of the University of California, S153002*. (G035537; 151 Cal.App.4th 132; Superior Court of Orange County; 00CC01942.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Could the surviving spouse of a person who donated his body for medical research sue in contract or in tort based on a claim that the university failed to keep track of her husband's body, failed to contact her before disposing of the remains, and allegedly mishandled or treated the remains improperly or in a manner not permitted by the donative contract?

(8) *Fairbanks v. Los Angeles County Superior Court (Farmers New World Life Insurance et al., Real Parties in Interest), S157001*

#07-438 *Fairbanks v. Los Angeles County Superior Court (Farmers New World Life Insurance et al., Real Parties in Interest), S157001*. (B198538; 154 Cal.App.4th 435; Superior Court of Los Angeles County; BC305603.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate. This case presents the following issue: Is insurance a "good" or a "service" that is subject to the Consumers Legal Remedies Act (Civ. Code, § 1750)?

(9) *People v. Stone (Nicholas Scott)*, S162675

#08-104 *People v. Stone (Nicholas Scott)*, S162675. (F051812; 160 Cal.App.4th 937; Superior Court of Kings County; 0CM4433.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses. This case presents the following issues: (1) In a prosecution for a single count of attempted murder, did the trial court err by instructing the jury on the “kill zone” concept (see *People v. Bland* (2002) 28 Cal.4th 313) when defendant fired a single shot into a crowd although he was ostensibly not shooting at anyone in particular and there was no “primary” target? (2) Did substantial evidence support defendant’s conviction for attempted murder in this case?

1:30 P.M.

(10) *Ste. Marie v. Riverside County Regional Park & Open Space Dist., (Mt. San Jacinto Community College Dist., Real Party in Interest)*, S159319

#08-46 *Ste. Marie v. Riverside County Regional Park & Open Space Dist. (Mt. San Jacinto Community College Dist., Real Party in Interest)*, S159319. (E041312; 156 Cal.App.4th 1148; Superior Court of Riverside County; RIC416770.) Petition for review after the Court of Appeal affirmed the judgment in an action for writ of administrative mandate. This case presents the following issue: Did the lower courts err in this case by concluding that property acquired by the District for recreational purposes was “actually dedicated” by operation of law, pursuant to Public Resources Code section 5565, and that Public Resources Code section 5540 required the District to obtain the consent of a majority of voters in the District in order to validly convey the property to a local community college district?

(11) *People v. Gaines (Rodney Louis)*, S157008

#07-442 *People v. Gaines (Rodney Louis)*, S157008. (B192177; nonpublished opinion; Superior Court of Los Angeles County; MA032254.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses and remanded with directions. The court limited review to the following issue: Is outright reversal or a

remand for a showing of prejudice the appropriate remedy for a trial court's erroneous denial of a *Pitchess* motion (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531)?

(12) *People v. Curl (Robert Zane)*, S034072 [Automatic Appeal] (Baxter, J., not participating; Needham, J., assigned justice pro tempore)

This matter is an automatic appeal from a judgment of death.

THURSDAY, MARCH 5, 2009—9:00 A.M.

(13) *Strauss et al. v. Horton (Hollingsworth et al., Interveners)* (and two other cases, S168066 *Tyler et al. v. State of California et al. (Hollingsworth et al., Interveners)* and S168078 *City and County of San Francisco et al. v. Horton (Hollingsworth et al., Interveners)*)

The court issued an order to show cause in *Strauss*, *Tyler*, and *City and County of San Francisco* directing the parties to brief and argue the following issues: (1) Is Proposition 8 invalid because it constitutes a revision of, rather than an amendment to, the California Constitution? (See Cal. Const., art. XVIII, §§ 1–4.) (2) Does Proposition 8 violate the separation of powers doctrine under the California Constitution? (3) If Proposition 8 is not unconstitutional, what is its effect, if any, on the marriages of same-sex couples performed before the adoption of Proposition 8?